

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
KEITH RUSSELL JUDD
On Request for Inspection of Records
FOIA Control No. 2007-531

MEMORANDUM OPINION AND ORDER

Adopted: March 5, 2008

Released: March 7, 2008

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. This Memorandum Opinion and Order denies an application for review filed by Keith Russell Judd (Judd) of the Media Bureau’s (MB) response to his Freedom of Information Act (FOIA) request. Judd requested “all information relevant to the FCC’s investigation into and enforcement of my requests for broadcasters to provide equal opportunity to provide for paid political advertisements nationwide.”

2. In his application for review, Judd complains that MB did not disclose “all information as to my numerous requests to media broadcasters and internet broadcasters, nationwide in my active campaign as a Democratic Candidate Legally Qualified for Office of the President of the United States.” Judd indicates that he has filed “monthly complaints to the Federal Communications Commission, asking for ENFORCEMENT of the Communications Act, 47 U.S.C. § 315 and the fairness doctrine.” He states:

1 Letter from Keith Russell Judd to Leslie F. Smith, Privacy Analyst (Sept. 4, 2007).

2 Letter from Michael S. Perko, Chief Office of Communications and Industry Information, MB to Mr. Keith Russell Judd (Sept. 14, 2007) (Response) and attachments.

3 FCC CIB-1, 66 Fed. Reg. 51955 (Oct. 11, 2001).

4 Letter from Keith Russell Judd to Federal Communications Commission (Sept. 24, 2007) (AFR).

5 Id.

6 Judd is referring to the “equal time doctrine” contained in 47 C.F.R. § 315(a). This doctrine requires Commission licensees who permit legally qualified candidates for public office to use a broadcast station to afford equal opportunities to other candidates for that office to use the station. See also Rosenberg v. Everett, 328 F.3d 12, 16 (1st Cir. 2003) (discussing the equal time doctrine: “once a candidate is permitted to use the station, the station must provide other candidates ‘with equal time at an equal rate, at a

With my complaints against nationwide broadcasters, the Federal Communications Commission is obligated to investigate each complaint, and obtain from the nationwide broadcasters, their lists of requests for equal political advertisement time at the same cost, and any other requests or demands under the Communications Act.⁸

He further states “I am appealing the search for records under the Freedom of Information Act. . . .”⁹

II. DISCUSSION

3. We will deny Judd’s application for review. We conclude that the documents disclosed to Judd represent all of the responsive records discovered by MB’s search of its files. We further conclude that there is no reason to fault MB’s search or to believe that other responsive documents exist. Under the FOIA, an agency must conduct a search “reasonably calculated to uncover all relevant documents.”¹⁰ Further, “the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.”¹¹ Here, MB searched its records and located in the Informal Complaints and Inquiries database and related files the records responsive to Judd’s political broadcasting complaints. The FOIA requires no more.

4. Judd cites *LaCedra v. Executive Office for U.S. Attorneys* for the proposition that his request for “all information on myself” was sufficiently specific to seek “all information.”¹² In *LaCedra*, a FOIA requester filed a request seeking “all documents pertaining to” the criminal case against him, followed by the statement that he “specifically” sought several enumerated items. The court faulted the agency for providing only the enumerated documents, and held that the request was “reasonably susceptible” to the broader reading of the request, *i.e.*, to be for “all

(“Continued . . .”)

comparable hour of the day, and with a similar format for presentation”), quoting *Kennedy for President Comm. v. FCC*, 636 F.2d 432, 437 n. 33 (D.C. Cir. 1980).

⁷ See 47 C.F.R. § 73.1910. See also 47 U.S.C. § 315(a) (broadcasters’ obligation “to afford reasonable opportunity to for the discussion of conflicting views on issues of public importance.”). The Commission ceased enforcement of the fairness doctrine (in contradistinction to the equal time doctrine) in 1987 after determining that such enforcement no longer served the public interest. See *Syracuse Peace Council v. FCC*, 2 FCC Rcd 5043 (1987), *aff’d*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied.*, 493 U.S. 1019 (1990).

⁸ AFR.

⁹ *Id.* Judd also asked that his records be corrected or amended pursuant to the Privacy Act (5 U.S.C. § 552a(d)(2)). Because, as discussed below, there is no further information to disclose, there is no basis to amend or correct Judd’s records.

¹⁰ See *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

¹¹ See *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

¹² 317 F.3d 345, 347-48 (D.C. Cir. 2003).

documents.”¹³ Here, Judd originally filed a request, citing the FOIA and the Privacy Act,¹⁴ for “all information on myself.”¹⁵ Because Judd cited the Privacy Act, the Commission responded by asking Judd to clarify which system of records should be searched.¹⁶ Judd responded that “specifically” he sought the information described in paragraph 1, above, regarding his equal time complaints. Accordingly, MB searched the Commission’s informal complaints and inquiries system of records, which is the Commission’s repository of information about equal time complaints, and related files.¹⁷ Because Judd’s narrower request was made in specific response to a request for clarification, it was appropriate for MB to search for those specific records.¹⁸ Further, the request in *LaCedra* for all documents pertaining to a criminal case being prosecuted by the agency is much easier to fulfill without further clarification than one that applies to all the Commission’s documents in any subject area. For these reasons, we find *LaCedra* inapposite.¹⁹

5. We find no merit to Judd’s speculation, based on his own interpretation of section 315, that further records must exist.²⁰ The database records concerning Judd’s complaints were typically designated “NRN,” meaning “no response necessary.”²¹ This designation applies to informal complaints that are nonspecific, redundant, or otherwise non-actionable.²² This designation supports the conclusion that no further records exist for these complaints. Further,

¹³ *Id.* at 348.

¹⁴ 5 U.S.C. § 552a.

¹⁵ Letter from Keith Russell Judd to Federal Communications Commission (Jul. 6, 2007).

¹⁶ Letter from Leslie F. Smith to Mr. Keith Russell Judd (Aug. 13, 2007). *See* 47 C.F.R. § 0.554(a) (requiring request under the Privacy Act to specify the systems of records to be searched).

¹⁷ *See* Informal Complaints and Inquiries, note 3, *supra*.

¹⁸ *See Rugiero v. U.S. Dep’t of Justice*, 257 F.3d 534, 548 (6th Cir. 2001), *cert. denied*, 534 U.S. 1134 (2002) (Because the FOIA requires a requester to reasonably describe the records sought, the agency may reasonably require a clarification that narrows the scope of the search before processing the request).

¹⁹ In any event, there is no reason to believe that there is any other information regarding Judd in any Commission records, since his contacts with the Commission appear to be limited to political broadcasting complaints.

²⁰ *See Iturralde v. Comptroller of the Currency*, 315 F.3d at 316 (“[m]ere speculation that as yet undiscovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them”).

²¹ *See* Response, Attachments.

²² *See Political Primer 1984*, 100 FCC 2d 1476, 1478-79 ¶ 6 (1954) (“How to file a complaint”). We find no support for Judd’s contention in his AFR that the Commission “is obligated to investigate each complaint,” apparently without regard to its merit or compliance with Commission standards. In any case, that claim is beyond the scope of the FOIA. Additionally, Judd asserts that various statutes, including the Hatch Act (5 U.S.C. §§ 732 *et seq.*) and 18 U.S.C. § 245, require the Commission to “accommodate my federally protected activity for C[a]mpaigning for President of the United States . . . campaigning as a candidate for elective office, and participating in any program administered by the United States.” AFR. We are unable to discern in this vague assertion any provisions of the cited statutes that might be relevant to Judd’s FOIA claims.

MB confirms that it has reexamined its files and consulted with relevant staff regarding Judd's complaints. MB indicates that even those complaints not designated "NRN" were similar in character to those that were, and that no further records related to those complaints exist.²³

III. ORDERING CLAUSES

6. IT IS ORDERED that Keith Russell Judd's application for review IS DENIED. Judd may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(B).

7. The officials responsible for this action are the following Commissioners: Chairman Martin, Commissioners Copps, Adelstein, Tate, and McDowell.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²³ We note that the first of the two letters released to Judd is a 1997 letter informing Judd that Commission staff had been unable to reach him by telephone because his telephone was out of order. It advised him to contact the Commission within 10 days to give the Commission more information about his complaint against three broadcast stations. Letter from Norman Goldstein, Chief, Complaints & Political Programming Branch to Mr. Keith Judd (Oct. 10, 1997). The second letter is a 1999 letter finding no basis to Judd's complaints that the Commission was "holding back the media" from broadcasting information about Judd's campaign for President and his criminal case. It informed Judd that the Commission may not interfere with a broadcaster's freedom of expression and that a candidate had the obligation to substantiate that he is in fact legally qualified to trigger a broadcaster's obligation to provide access. Letter from Robert Baker, Chief, Office of Political Programming to Keith Russell Judd (Nov. 22, 1999).